IN THE HIGH COURT OF BOMBAY AT GOA

MISCELLANEOUS CIVIL APPLICATION NO. 119 OF 2005 IN FIRST APPEAL NO. 86 OF 1998

Kamalakar Vinayak Raut Dessai,
(since deceased, represented by
legal heirs)
1. Smt. Sukanti @ Anandi K. Raut
Dessai (wife),
2. Uttam K. Raut Dessai (son),
3. Mrs. Shashikala Uttam Raut
Dessai (wife of Uttam Raut
Dessai) ... Applicants

IN

1. Special Land Acquisition Officer,
(SIP), Gogal, Margao, Goa,

2. The Executive Engineer,
Works Division XIII,
Irrigation Department,
Quepem, Goa. ... Appellants

Versus

1. Balkrishna Govind Raut Dessai,

2. Dattu Vinayak Raut Dessai both
r/o Assolda, Quepem, Goa. ... Respondents.

Mr. S. D. Lotlikar, Senior Advocate with Ms. K. Sambari, advocate for the applicants.

Mr. H. R. Bharne, Government Advocate for the respondents.

CORAM: S. S. PARKAR, J.

DATE: 22nd June, 2005.

ORAL ORDER

This application is made by one of the co-owners of the property which was acquired, for deposit in court of his share of the compensation payable by the Government.

2. Initially compesation had been granted at the rate of Rs.5/- per sq. mt. by the Special Land Acquistion Officer. Reference was made by two out of three claimants only under Section 18 of the Land Acquisition Act, 1894. In that reference, being Land Acquisition case No.28/93, the Additional District Judge, South Goa, Margao, by his Judgment and Order dated 22nd June, 1998, had enhanced the compensation payable in respect of the acquired land from Rs.5/- per sq. mt. to Rs.10/- per sq. mt. The said Order was challenged by the Government in First Appeal No.86/98 in this Court, which came to be dismissed by this Court on 12th April, 2004, confirming the Order of the District Court of enhancement of compensation. So far as compensation granted by the Collector at the rate of Rs.5/- per sq. mt. is concerned, the same had been paid to the co-owners, including the present applicants. The enhanced compensation granted by the District Court and confirmed in appeal was paid by the Government in respect of 3/4ths of the property belonging to the two claimants who had preferred reference under Section 18 of the Act. The enhanced amount in respect

of 3/4ths share of the property was valued at Rs.l,70,270/- , which was deposited in Court by the respondent Government and withdrawn by the two co-sharers of the property, one of whom was entitled to 1/2 share and the other entitled to 1/4th share. This application is made by the heirs of the third co-owner, who was entitled to 1/4th share in the property acquired by the respondent- Government.

3. The said application is opposed on behalf of the Government. It is contended on behalf of the respondents that since the applicants had not made a reference under Section 18 of the Land Acquisition Act, they are not entitled for the enhanced compensation. Reliance is placed by the learned Government Advocate on the judgment of the Supreme Court in the case of ***A. Viswanatha Pillai & Ors. vs. Special Tahsildar for Land Acquisition No.IV & Ors.*** (AIR 1991 S.C.1966). In my view, that judgment does not support the contention raised on behalf of the respondents. That was a case where a reference was filed by only one of the brothers. In that reference, enhanced compensation was granted. Government had objected to payment of compensation to the other brothers who had not filed reference. The Supreme Court held that reference made by one of the co-owners is made in effect in respect of the entire property, since the co-owner is as much an owner of the entire property as the sole owner of the property and that position would undergo change only when partition takes place and division of

the property is by metes and bounds. The learned Government Advocate however relies on the observations of the Supreme Court in the aforesaid judgment stating that in the reference application made by one of the co-owners it was stated that he and his brothers were dissatisfied with the Award by the Collector and, therefore, that reference was deemed to have been made on behalf of all the co-owners, but no such statement is made in the reference application made by the two co-owners in the present case. In my view, that circumstance has been mentioned by the Apex Court not as a basis for allowing the claim of the co-owners for enhanced compensation, but as an additional factor in favour of the claimants, as the judgment is based on the ground that a co-owner is as much the owner of the entire property as a sole owner of the property until the property is partitioned by metes and bounds. It was further observed that what was acquired was the totality of right, title and interest of all the co-owners in the acquired property and when reference is made by some owners only, it is deemed to have been made in respect of the entire land and, therefore, all the co-owners are equally entitled to receive compensation pro rata as per their shares even in the enhanced compensation. Thus, the statement in reference application that he and his brothers were dissatisfied was considered as an additional factor to allow the application of those who had not filed reference application.

4. In this application, it is not denied on behalf of the

respondents that the applicants are the heirs of the third co-owner of the property. The reference made by two of the co-owners is deemed to have been made in respect of totality of the rights, title and interest of all the co-owners in the acquired property and, therefore, can be deemed to have been made on behalf of all the co-owners, including the predecessor-in-title of the applicants. It is not in dispute that the respondents had deposited the enhanced compensation in respect of 3/4th share of the acquired property only, nor it is disputed that the applicants are entitled for remaining 1/4th share of the property acquired. It is not the case of the respondents that in this case partition of the property had taken place between the co-sharers. Consequently, the respondents shall have to deposit a sum of Rs.57,400/- towards the enhanced compensation in respect of 1/4th share in the property belonging to the applicants' predecessor-in-title.

5. The application is, therefore, allowed as prayed. The respondents are directed to deposit the sum of Rs.57,400/- in this Court within six weeks from today.

S. S. PARKAR, J.

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